

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS NOTICE

59-06

9/13/06

ILLEGALLY IMPORTED OR SMUGGLED PRODUCTS

I. PURPOSE

This notice provides methodologies that the Office of Program Evaluation, Enforcement and Review (OPEER) and the Office of International Affairs (OIA) will apply when surveillance or investigations identify meat, poultry, or egg products from a foreign country that have been illegally imported or smuggled into the United States (U.S.).

For purposes of this notice, “illegally imported products” are products that may be accurately labeled and properly manifested at the border but do not meet all requirements for entry into the U.S.(e.g., beef carcasses from an ineligible country). “Smuggled products” are prohibited products that a party fraudulently brings into the U.S. (e.g., chicken from an ineligible country packed into boxes labeled as containing fish).

NOTE: The methodologies in this notice do not apply to products produced by foreign establishments that are properly certified by the foreign government but that are not presented for FSIS import reinspection. The Agency’s methods for handling such “failure to present” product remain unchanged.

II. BACKGROUND

FSIS has the legal authority to regulate the importation of products into the U.S., as stated in Section 20 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 620), Section 17 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 466), and Section 17 of the Egg Products Inspection Act (EPIA) (21 U.S.C. 1046). In part, these Acts state that no meat, poultry, or egg products shall be imported into the U.S. unless they comply with the rules and regulations made by the Secretary to ensure that imported products comply with the Acts.

DISTRIBUTION: Inspection Offices;
T/A Inspectors; TRA; TSC; Import
Offices

NOTICE EXPIRES: 10/1/07

OPI: OPPED

Under this authority, FSIS conducts surveillance and investigative activities at U.S. borders and ports of entry and at food warehouses, distribution centers, retail stores, and other in-commerce businesses where imported meat, poultry, and egg products are entered, offered for entry, or sold and distributed. Uncertified products produced in an unapproved country or establishment, and entered into U.S. commerce in violation of the Acts and regulations, unless otherwise exempt from these requirements, are subject to detention and seizure. (See 21 U.S.C. 467a, 467b, 672, 673, 1048, and 1049.)

III. OPEER Investigator and OIA Import Surveillance Liaison Officers (ISLO) Responsibilities

A. If an Investigator or ISLO, while conducting surveillance activities, discovers product that has been illegally imported or smuggled into the U.S., he or she is to:

1. detain and control the product as set out in FSIS Directive 8410.1, Revision 1, Detentions and Seizures, at which point the owner or the agent of the owner of the product may immediately agree to destroy the product voluntarily.

NOTE: Before permitting destruction, the investigator or ISLO will advise the Regional Manager or OIA Regional Import Field Supervisor so that he or she can determine what further investigation FSIS may need to undertake.

2. notify the appropriate Area Veterinarian-in-Charge (AVIC) or Smuggling Interdiction Trade Compliance (SITC) officer, Animal and Plant Health Inspection Service (APHIS), and

NOTE: If there is an animal health concern, the Investigator or ISLO is to notify the appropriate AVIC before product destruction.

3. issue an Import Alert via normal channels and send a copy to both the OPEER Regional Manager and the OIA Regional Import Field Supervisor, and to the Office of Food Defense and Emergency Response (OFDER) email box, IF-OFDER@FSIS.USDA.GOV.

B. When the owner or owner's agent does not immediately destroy the product, the OPEER Regional Manager or the OIA Regional Import Field Supervisor will determine whether oversight of the product is necessary until the owner or owner's agent arranges the destruction of the product. The need for oversight is based on factors, including, but not limited to:

1. the type of product;
2. the amount of product;
3. the location of the product;

4. the potential for foreign animal diseases;
5. the ability of the owner or owner's agent to control and properly destroy the product; and
6. compliance history or other relevant information on the owner or owner's agent.

C. The owner or the owner's agent decides to destroy the detained product, he/she is expected to do so by appropriate means. The Investigator or ISLO is to obtain a completed and signed copy of FSIS Form 8080-4, Voluntary Destruction of Human Food Products, from the owner or the owner's agent. The investigator or ISLO will then verify that the detained product's destruction by appropriate means.

D. If the owner or the owner's agent is not willing to voluntarily destroy the detained product, the Investigator or ISLO is to proceed in accordance with section X. of FSIS Directive 8410.1.

IV. OPEER Regional Manager Responsibilities

A. The Regional Manager will determine whether he or she should refer the information obtained concerning the illegally imported or smuggled product to the Office of the Inspector General (OIG) for investigation, using the criteria in the Memorandum of Understanding (MOU) with OIG. The OIG will determine whether to investigate (e.g., open a case memorandum) and, if appropriate, notify Federal, State, or local law enforcement officials or other authorities.

B. If OIG declines to investigate, or if the Regional Manager determines that referral to the OIG is not required under the MOU, he or she is to:

1. initiate an FSIS investigation,
2. assemble a Hazard Evaluation Committee (HEC) that will assess the public health risk associated with the product that has been illegally imported or smuggled into the U.S., and
3. notify the OIA Regional Import Field Supervisor as appropriate.

V. Hazard Evaluation Committee

A. The HEC is a committee of representatives from OPEER, OIA, OFDER, the Office of Public Science (OPHS), and the Office of Policy, Program, and Employee Development (OPPED) that FSIS convenes to assess public health risk associated with product that has been illegally imported or smuggled into the U.S.

B. If the HEC determines that there is a significant public health risk, and that some follow-up action is apparently required (e.g., product sampling, product recall,

or a press release), it will ask OFDER to convene the FSIS Emergency Management Committee (EMC) as set out in FSIS Directive 5500.2.

C. The EMC will determine what actions, such as consulting with state and territorial health offices, notifying the public via a public health alert, product sampling, or an investigative or public health response, are necessary. OPEER management will notify the Regional Manager of any further actions he or she should take. OPEER will complete the investigative inquiry and make case disposition.

D. If a HEC determines that there is no significant public health risk (e.g., product sampling or public notification not required), it will contact the Regional Manager. The Regional Manager will complete the investigative inquiry, make a case disposition, and contact the appropriate state and territorial health and agricultural offices.



Assistant Administrator
Office of Policy, Program, and Employee Development